

REMARKS/ARGUMENTS

Reconsideration and allowance of the above-referenced application are respectfully requested.

Claims 2, 4, 5, 11, 13 and 36 have been amended.

Additionally, Applicants' attorney, Cheryl L. Becker, truly appreciates the comments of Examiner Daniel Sullivan during the telephonic interview of January 10, 2005. As a result of these comments, Applicants' attorney shall, most likely, pursue plant claims and/or *in vivo* claims in a continuation application.

Further, it is submitted that the objection to the specification concerning a deposit date and deposit number has been addressed by the amendment shown above and should be withdrawn accordingly.

Provisional Rejection of Claims 2, 4, 5, 11-16 and 36 Under the Doctrine of Obviousness-Type Double Patenting

The Examiner has provisionally rejected claims 2, 4, 5, 11-16 and 36 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-5, 10, 16, 17 and 20 of copending Application No. 10/431,952.

It is, again, requested that the rejection be held in abeyance until such time as allowable subject matter is noted by the Examiner in either application.

Rejection of Claims 2, 4, 5 and 36 Under 35 U.S.C. 112, First Paragraph

The Examiner has rejected claims 2, 4, 5 and 36 under Section 112, first paragraph, for reasons of enablement.

In response, it is submitted that the rejection has been overcome and should be withdrawn accordingly.

Rejection of Claims 11 and 13 Under 35 U.S.C. 112, First Paragraph

The Examiner has rejected claims 11 and 13 under Section 112, first paragraph. In particular, the Examiner alleges that the specification, while being enabling for a method of producing a desaturase in a host cell *in vitro* and an isolated host cell comprising a vector comprising the nucleic acid of SEQ ID NO:13, does not reasonably provide enablement for the method or host cell *in vivo*.

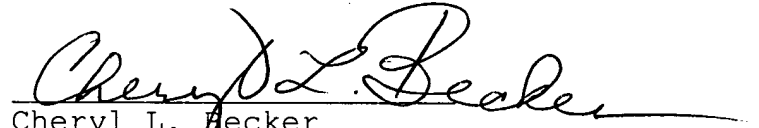
In response and as discussed during the January 10, 2004 telephonic interview, Applicants can provide data (in the form of a Declaration) establishing that the gene of the present invention has been expressed in plants, and thus, *in vivo*. (Further, as noted in the Amendment of August 18, 2004, public documents existed before the priority date of the present application which disclosed that desaturase genes (related to the one of the present application) could be expressed in plants.) However, Examiner Sullivan indicated that it would be best to pursue plant claims and/or *in vivo* claims in a separate application; thus, based upon the Examiner's recommendation, this is the course of action that will, most likely, be pursued. Claims 11 and 13 of the subject application has been amended to recite *in vivo* or isolated, respectively.

In view of the above, it is submitted that the Section 112, first paragraph rejection of claims 11 and 13 has been overcome and should be withdrawn accordingly.

In conclusion, it is submitted that the subject application is in condition of allowance and Notice to that effect is respectfully requested.

Further, should the Examiner have any questions relating to the above, he is respectfully requested to contact the undersigned at the telephone number listed below.

Respectfully submitted,

A handwritten signature in cursive script, reading "Cheryl L. Becker", written over a horizontal line.

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